plaintiff is not chargeable with the negligence of the driver of the team after which she rode. She could have sued him for the injury she has sustained. The defendant is guilty of injuring her as well as he is. They have severally wronged her. She might sue either." It was said in *Brown* v. *Rd.*, *supra*, that this case was not good law, but *Robinson* v. *Rd. supra*, and *Dryer* v. *Erie Ry.*, *supra*, settle the rule this way in N. Y.

The principal case fully sustains the New York rule.

EUGENE MCQUILLEN.

[Since the receipt of the above note a decision of the Court of Errors and Appeals of New Jersey has been published in which that court also declines to adopt the rule laid down in *Thorogood* v. *Bryan*. See *N. Y., L. E. & West. Rd.* v. *Steinbrenner*, 18 Vroom 161, *ante*, p. 684.—ED.)

Supreme Court of Indiana.

GLIDDEN *v.* HENRY.

A promissory note containing the clause, "the drawers and endorsers * * * expressly agree that the payee or his assignees may extend the time of payment thereof from time to time, indefinitely, as he or they may see fit," is non-negotiable.

APPEAL from Henry Circuit Court.

Millett & Bundy, for appellant.

J. M. Morris, for appellee.

The opinion of the court was delivered by

ZOLLARS, J.—For value, and before maturity, appellee became the owner of two promissory notes executed by appellant, one of which is as follows:

$750. New Castle, Ind., April 14th 1883.

Twelve months after date we, or either of us, promise to pay to the order of George W. Nugen, Jr., seven hundred and fifty dollars, with interest at the rate of seven per cent. per annum, after date, until paid, and attorney fees, value received, without any relief whatever from valuation or appraisement laws, with eight per cent interest from maturity. The drawers and endorsers severally waive presentment for payment, protest and notice of protest and non-payment of this note, and further, expressly agree that the payee or his assignees may extend the time of payment thereof from time to time, indefinitely, as he or they may see fit, and receive interest in advance, or otherwise, from the maker or endorsers, for any extension or forbearance so made. Negotiable and payable at the Citizens' State Bank of New Castle. J. W. GLIDDEN.

So far as is material here, the other note is the same. Appellee brought this action to recover the amount of the notes, and to foreclose the mortgage given by appellant to secure them. The questions for decision are presented by the ruling of the court below in sustaining a demurrer to appellant's answers, and the assignment here that that ruling was erroneous. If the notes are negotiable as inland bills of exchange, the demurrer was properly sustained, because the defences set up in the answers are such as cannot be made as against the *bona fide* holder of such paper. We are therefore met at the threshold with the question, are these notes negotiable as inland bills of exchange? In section 5506, Rev. St. 1881, it is provided that "notes payable to order or bearer, in a bank in this state, shall be negotiable as inland bills of exchange, and the payees and endorsees thereof may recover as in case of such bills." This statute does not provide what shall constitute a promissory note. The term "note" is used as it was under the law-merchant in the commercial world: *Melton* v. *Gibson*, 97 Ind. 158. The sole purpose of the section was to put a limitation upon section 5503, and provide for commercial paper that might circulate free from defences in favor of the maker. This is accomplished by the provision that, if the note be payable at a bank in this state, it shall be negotiable as inland bills of exchange. The note, then with the addition prescribed by the statute, must be such as would have been negotiable under the law-merchant without any statutory provision. Are the notes in suit such as would have been thus negotiable? A standard author has said: "To learn what qualities are essential to a negotiable promissory note, we must bear in mind the purpose of the note, and of the law in relation to it. This is simply that the note may represent money, and do all the work of money in business transactions. For this purpose, the first requisite—that, indeed, which includes all the rest—is certainty. This means certainty.—* * * Second, as to the person or persons who are to make this payment, and the order and conditions of their liability. * * * Fourth, as to the time when payment is to be made. * * * It will be seen that the law endeavors to enforce, define and protect all these certainties as far as possible," &c. Par. Bills & Notes 30. See, also, 1 Daniel Neg. Inst. § 41. This same general doctrine of the books is recognised by this and all other courts: *Walker* v. *Woollen*, 54 Ind. 164. In this case it was said: "A note, in order that it may be negotiable in accordance with the law-merchant, must be payable

unconditionally and at all events, and at some fixed period of time, or upon some event which must inevitably happen."

Were it necessary we might cite numerous decisions by this court asserting the general doctrine of certainty as necessary to a promissory note under the law merchant. The difficulty is not as to the general doctrine, but the application of it to each case as it arises. In the case before us, all parts of the note must be looked to in determining the quality of the paper. There is a promise to pay in twelve months, but that promise is not certain and unconditional. The other clause is that the time of payment may be extended indefinitely, as the parties may agree. From an inspection of the note, it is impossible to tell when it may mature, because it is impossible to know what extension may have been or may hereafter be agreed upon. No definite time is fixed, nor is the maturity of the note dependent upon an event that must inevitably happen. The condition is, not that something may happen or be done that will mature the note before the time named, thus leaving that time as fixed and certain, if the thing do not happen or be not done, but the condition is that the time named may be displaced by another uncertain and indefinite time, as the parties may agree. This distinguishes the case from some of the cases cited by appellee, which hold that so long as a definite time of payment, as fixed in the note, remains fixed and certain, the note retains its negotiability, although by certain agreed conditions it may be matured before that time. The case here is also distinguishable from another class of cases which hold that the time of payment may be dependent upon an event that must inevitably happen, such as the death of the maker, the coming of the seasons, &c.

The precise question involved here has been passed upon by the Supreme Courts of Iowa and Michigan, and in each case it was held that the condition destroyed the negotiability of the note: *Woodbury* v. *Roberts*, 59 Iowa 348; *Smith* v. *Van Blarcom*, 45 Mich. 371; see, also, *Cook* v. *Satterlee*, 6 Cow. 108; *Gillilan* v. *Myers*, 31 Ill. 525; *Costelo* v. *Crowell*, 127 Mass. 293. We conclude from the foregoing that the notes in suit are not negotiable under the statute as inland bills of exchange, and that, therefore, whatever defences appellant might have set up and made available as against Nugen, the payee, he may set up and make available as against appellee. Appellee concedes that the first answer is sufficient if the notes in his hands are subject to defences by appellant. A

holding, therefore, that the notes are thus subject to defences, is a holding that the court below erred in sustaining the demurrer to all of the answers. Appellant's counsel have directed the whole of their argument to the proposition that the notes are open to defences, and have said nothing in support of the answers. The first answer is clearly good, as it sets up an entire want of consideration for the notes. For the sustaining of the demurrer to this answer, the judgment must be reversed. There is nothing in the notes nor in the mortgage that can operate as an estoppel, as against appellant, to make this defence.

As there is no discussion of the other answers, we observe simply that the second answer, setting up an extension of the time of payment, is not good as a plea in bar. If such an extension may be made available, as we think it may be in this case, it should be brought forward as a plea in abatement. And under our present statute (section 365, Rev. St. 1881) such answer must precede, and cannot be pleaded with, an answer in bar. As to the third answer, in which there was an attempt to make available as a defence the fact that Nugen was not the owner of an undivided one-third of the land covered by the mortgage, it is sufficient to say that the plea does not make a defence either upon the ground of fraud, or upon the ground that there was a breach of warranty.

The judgment is reversed with costs.

Speaking of a promissory note, it was said that "it must be an absolute promise, in writing, signed, but not sealed, to pay a specified sum at a time therein limited, or on demand, or at sight, to a person therein named, or to his order, or to the bearer :" *Drake* v. *Markle*, 21 Ind. 435, citing Byles on Bills 4. This is substantially the definition of the books and cases: Daniels on Negotiable Instruments, sect. 30: Story on Notes, sects. 20–22 ; Benjamin Chalmers's Digest, art. 271 ; *Hays* v. *Gwin*, 19 Ind. 19 ; *Miller* v. *Austen*, 13 How. (U. S.) 218 ; 1 Pars. Notes and Bills 42 ; Chitty on Bills 134.

Requisite as to time of Payment.—The principal case turned upon the question whether or not the time of payment was made certain by the words used ; and it was held that it was not, and consequently the note was not negotiable.

Story says a note "must be payable absolutely, and at all events, and not be subject to any condition or contingency :" Story on Notes, sect. 20–22.

"It is an essential requisite of a promissory note, that there must be certainty as to the fact of payment. It must be payable at all events, and not dependent upon a condition or contingency :" *Titlow* v. *Hubbard*, 63 Ind. 8 ; *Hays* v. *Gwin*, 19 Id. 21.

"A note, in order that it be negotiable in accordance with the law-merchant, must be payable unconditionally, and at all events, and at some fixed period of time, or upon some event which must inevitably happen :" *Walker* v. *Woollen*, 54 Ind. 166 ; *Walters* v. *Short*, 10 Ill.

259; *Whiteman* v. *Bliss*, 24 Id. 170; *Cook* v. *Satterlee*, 6 Cow. 108.

"A written engagement by one person, to pay absolutely and unconditionally to another person therein named, or to his order, or to the bearer, a certain sum of money, at a specified time, or on demand, or at sight:" *Hall* v. *Farmer*, 5 Denio 486.

In the view of this rule, what instruments have and have not been held negotiable with reference to the time of payment?

First.—A bill or note may be payable on demand, as "when demanded," or "at any time when called for:" *Kingsbury* v. *Butler*, 4 Vt. 458: *Bowman* v. *McChesney*, 22 Gratt. 609. Or it may be payable "in such instalments, and at such time as B. (the payee) may require;" this being nothing more than the demand of the payee, and if complied with is a payment on demand: *White* v. *Smith*, 77 Ill. 351. In the case cited the note was payable in such instalments as the directors of the payee company might assess or require; see also *Protection Ins. Co.* v. *Bill*, 31 Conn. 534. And a note payable in instalments not to exceed ten per cent. on each note, at thirty days, notice of call from board of directors was upheld; *Stillwell* v. *Craig*, 58 Mo. 24; also, a note "payable in such manner and proportion, and at such time and place as B. shall require," being payable on demand: *Goshen* v. *Hurtin*, 9 Johns. 217; see *Washington Co. Mutual Ins. Co.* v. *Miller*, 26 Vt. 77. But not to pay at such times, and in such articles as A. may need for support: *Corbitt* v. *Stonemetz*, 15 Wis. 170. Payable "on demand, with interest after four months" is good: *Loring* v. *Gurney*, 5 Pick. 15. See *First Nat. Bank* v. *Price*, 52 Iowa 570; *Hobart* v. *Dodge*, 1 Fairf. (Me.) 156. If no time of payment is specified, it is understood that the note is payable on demand: *Thompson* v. *Ketcham*, 8 Johns. 189; *Abbott* v. *Douglass*, 1 C. B. 491; *Herrick* v. *Bennett*, 8 Johns. 374; *Aldous* v. *Cornwell*, L. R., 3 Q. B. 573; *Gaylord* v. *Van Loan*, 15 Wend. 308; *Whitlock* v. *Underwood*, 2 B. & C. 157; *Cornell* v. *Moulton*, 3 Denio 12; *Stover* v. *Hamilton*, 21 Gratt. 273; *Keyes* v. *Fensternmaker*, 24 Cal. 329; *Green* v. *Drehillis*, 1 Ia. 552; *Freeman* v. *Roberts*, 15 Ga. 215; *Dodd* v. *Denny*, 6 Ore. 157; *Kendall* v. *Galvin*, 15 Me. 131; *Bacon* v. *Page*, 1 Conn. 404; *Jones* v. *Brown*, 11 Ohio St. 601; *Porter* v. *Porter*, 51 Me. 376. And if payable "—— months after date," it is payable on demand: *McLean* v. *Nichlen*, 3 Victorian L. R. 107.

Second.—A note or bill may be payable "at sight" or at a certain fixed period "after sight." (This term is seldom applied to a note.) The instrument is payable at sight when it is expressed to be so payable, or "on presentation," or "on demand at sight:" *Dixon* v. *Nuttall*, 1 Cr., M. & R. 307. So a promise to pay a certain sum after six months' notice is good; for a time certain may be fixed by giving notice: *Walker* v. *Roberts*, Car. & Marsh. 590; *Gaytes* v. *Hibbard*, 5 Biss. 99; *Dutchess Co.* v. *Davis*, 14 Johns. 238.

Third.—A bill or note may be made payable at a fixed future time; at a fixed period after date; at a fixed future period after sight; or at a time certain to transpire though indefinite; *Colehan* v. *Cooke*, Willes 393; *Cota* v. *Buck*, 7 Met. 588.

The time, however, when the note is payable, must certainly come, although the particular day need not be mentioned in the note. Thus the following has been held not to render a note non-negotiable: "I promise to pay A., or bearer, one hundred dollars, one year from date, with annual interest; and if there is not enough realized by good management in one year, to have more time to pay, in the manufacture of the plaster bed on B.'s land." It was said that the only uncertainty was as to the length of time to be given, and that "uncertainty the

law makes certain by giving him a reasonable time thereafter (the time prescribed) to make the payment:" *Capron* v. *Capron*, 44 Vt. 420.

Likewise a note was held to be negotiable that provided that it was "to be paid as soon as collected from my accounts at B.;" for the phrase did not make the debt conditional, but only provided that a reasonable time was to be allowed for the collection of the accounts: *Ubsdell* v. *Cunningham*, 22 Mo. 124. So a note payable on demand after date "when convenient" was held valid and payable absolutely in a reasonable time: *Works* v. *Hershey*, 35 Ia. 340; *Lewis* v. *Tipton*, 10 Ohio St. 88; so a note payable "as soon as I can:" *Kincard* v. *Higgins*, 1 Bibb (Ky.) 396. A note payable "from the avails of logs bought of B., when there is a sale made:" *Sears* v. *Wright*, 24 Me. 278; or "when I sell my place where I now live," has been held, in Maine, payable absolutely after a reasonable time: *Crooker* v. *Holmes*, 65 Me. 195. Likewise, a note payable in six months, "or as soon as I can with due diligence make the money out of said patent right:" *Palmer* v. *Hummer*, 10 Kans. 464; s. c. 15 Am. Rep. 353; *contra*, *Hubbard* v. *Mosely*, 11 Gray 170; or "as B.'s horse earns the money in the cavalry service;" *Gardner* v. *Barger*, 4 Heisk. 669; "or sooner if made out of a certain sale:" *Ernst* v. *Steckman*, 74 Penn. St. 13; s. c. 15 Am. Rep. 542; *Woollen* v. *Ulrich*, 64 Ind. 120; *Noll* v. *Smith*, Id. 511; *Cornell* v. *Nebeker*, 58 Id. 425; *Walker* v. *Woollen*, 54 Id. 165; s. c. 23 Am. Rep. 639; *Cisne* v. *Chidester*, 85 Ill. 523; has been held negotiable: *Charlton* v. *Reed*, 61 Ia. 166; s. c. 47 Am. Rep. 808.

A note payable "as soon as realized," to which was added, "to be paid in the course of the season now coming, was held to be an undertaking to pay absolutely. It was said: "Whatever time may be understood by the coming season, whether harvest-time or the coming year, it must come by mere lapse of time, and that must be the ultimate limit of the time of payment:" *Cota* v. *Buck*, 7 Met. 588. Likewise a certificate payable "on the return of this certificate," is negotiable: but adding "and the return of my guaranty" of a certain note engrafts a collateral condition which defeats the negotiability of the instrument: *Smilie* v. *Stevens*, 39 Vt. 316; *Blood* v. *Northup*, 1 Kans. 29.

So a note may be expressed to be payable, in effect, in a reasonable time. Illustrations of this rule have elsewhere been given. Thus a note payable "when convenient" was upheld; for the court could say what is a reasonable time, and the phrase used meant nothing else: *Capron* v. *Capron*, 44 Vt. 410; (*contra*, *Nunez* v. *Dautel*, 19 Wall. 560); *Work* v. *Hershey*, 35 Ia. 340; *Lewis* v. *Tipton*, 10 Ohio St. 88; (*contra*, *Ex parte Tooltell*, 4 Ves. 372. Or "when I sell my place:" *Crooker* v. *Holmes*, 65 Me. 195; or "to be paid as soon as collected from my accounts at P.:" *Ubsdell* v. *Cunningham*, 22 Mo. 124. As we have seen a note payable when A. becomes of age, is non-negotiable, for he may never attain his majority; but if the date of that prospective attainment were mentioned it would be different: *Goss* v. *Nelson*, 1 Burr. 226. But a note payable at or within a certain time after a man's death is not objectionable, for the man will certainly die: *Cooke* v. *Colehan*, 2 Stra. 1217; *Colehan* v. *Cooke*, Willes 393; *Roffey* v. *Greenwell*, 10 A. & E. 222; *Conn* v. *Thornton*, 46 Ala. 587; *Mortee* v. *Edwards*, 20 La. Ann. 236; even if made payable after the death of the maker: *Bristol* v. *Warner*, 19 Conn. 7; as "one day after date, or at my death:" *Conn* v. *Thornton*, 46 Ala. 587.

In England a note made payable a certain time after a government-ship is paid off was held valid; for the government is sure to pay: *Andrews* v. *Franklin*, 1 Stra. 24; *Evans* v. *Underwood*, 1 Wils. 262. But this case has been se-

verely criticised in this country: 1 Pars. N. & B. 40; Edwards on Bills & Notes 142.

So a negotiable note may be made payable in instalments, and provide that if there is a failure to pay any one instalment when due, the whole note shall become due and collectible. It is like a note or bill payable a certain time after sight: *Carlon* v. *Kenealy*, 12 M. & W. 139. See *Miller* v. *Biddle*, 13 L. T. Rep. 334, and *Wright* v. *Irwin*, 33 Mich. 32; *Cooke* v. *Horne*, 29 L. T. (N. S.) 369; *Sea* v. *Glover*, 1 Bradw. 335. So a note payable in the sum of one hundred dollars "by two equal instalments, due Aug. 1st and Oct. 1st," is valid: *Garkins* v. *Davis*, 2 F. & F. 294; see *Saunders* v. *McCarthy*, 8 Allen 42; or "in such manner and proportion, and at such a time and place as he shall require," as we have seen: *White* v. *Smith*, 77 Ill. 351; see *Colgate* v. *Buckingham*, 39 Barb. 177; but not "by instalments," not stating date: *Moffatt* v. *Edwards*, 1 Car. & M. 16. So a note payable "to B. or order, $1000, by ten equal instalments, payable, &c., all instalments to cease on the death of A.," is invalid: *Worley* v. *Harrison*, 3 A. & E. 669.

During the late Rebellion, notes were given sometimes payable a certain time after peace, or when peace should be declared. Thus a note payable "six months after peace is declared between the United States and the Confederate States of America," was held actionable six months after peace ensued: *Brewster* v. *Williams*, 2 S. C. 455; *Mortee* v. *Edwards*, 20 La. Ann. 236; *Gaines* v. *Dorsett*, 18 Id. 563. But this view has been denied: *McNinch* v. *Ramsey*, 66 N. C. 229; and it may well be doubted if they are negotiable: 1 Daniels Neg. Inst. sect. 49.

If a note is payable at a time certain, its negotiability is not destroyed because it is payable on or before that time; or "on or before one year from date:" *Helmer* v. *Krolick*, 36 Mich. 371. "The legal rights of the holder are clear and certain; the note is due at a time fixed, and it is not due before. True, the maker may pay sooner if he shall choose, but this option if exercised would be a payment in advance of the legal liability to pay, and nothing more. Notes like this are common in commercial transactions, and we are not aware that their negotiability is ever questioned in business dealings. It ought not to be questioned for the sake of any distinction that does not rest upon reason:" *Mattison* v. *Marks*, 31 Mich. 421, 18 Am. Rep. 197; *Jordon* v. *Tate*, 19 Ohio St. 586: *Smith* v. *Ellis*, 29 Me. 422; *Curtis* v. *Horn*, 58 N. H. 504; *Ernst* v. *Steckman*, 74 Penn. St. 17; s. c. 15 Am. Rep. 542. The doctrine of these cases applies to the case of a note payable by May 10th "or when A. completes" a certain building "according to contract," for the time fixed, May 10, is the ultimate day when it falls due: *Stevens* v. *Blunt*, 7 Mass. 240; *Goodloe* v. *Taylor*, 3 Hawks 458.

A note given for a machine and containing the clause that "the payee or his endorsee has full power to declare this note due and take full possession of said property at any time they may deem themselves insecure, even before the maturity of this note, and sell the same where this note is payable, on five days' notice in writing," is not negotiable because the amount recoverable is uncertain: *Smith* v. *Marland*, 59 Ia. 645; see *Deering* v. *Thom*, 29 Minn. 120.

So the negotiability of a note payable "on or before two years from date," is destroyed by a memorandum attached thereto providing that if paid within one year, there shall be no interest; because the amount is uncertain: *Lamb* v. *Story*, 45 Mich. 488.

If a note is payable only on condition that certain terms be complied with, it is non-negotiable Such is the case if the note is made payable, if a certain railroad be built to a certain point by a time

named: *Blackwan* v. *Lehman*, 63 Ala. 547: *Eldred* v. *Malloy*, 2 Col. 320; or if a certain act be done: *Appleby* v. *Beddolph*, 8 Mod. 363; or if another person shall not previously pay: *Roberts* v. *Peake*, 1 Burr. 323; or if a certain receipt be produced: *Mason* v. *Metcalf*, 4 Bax. 440; (*contra*, *Frank* v. *Wessels*, 64 N. Y. 158), because return of the receipt was not the essence of the contract; or if a certain ship shall arrive: *Coolidge* v. *Ruggler*, 15 Mass. 387: *Palmer* v. *Pratt*, 2 Bing. 185; *Grant* v. *Wood*, 12 Gray 220; see *Pinkham* v. *Macy*, 9 Met. 174; or if the maker be able: *Ex parte Tooltell*, 4 Ves. 372; *Salimas* v. *Wright*, 11 Tex. 572; or "when A. shall marry:" *Pearson* v. *Garrett*, 4 Mod. 242; *Beardsley* v. *Baldwin*, Stra. 1157; or "when a certain sale is made:" *De Forest* v. *Frary*, 6 Cow. 151; *Hill* v. *Halford*, 2 B. & P. 413; "or when a certain suit is determined:" *Shelton* v. *Bruce*, 9 Ga. 24; "or certain divisions disclosed:" *Brooks* v. *Hargreaves*, 21 Mich. 255; or "when the estate of A. is settled up:" *Husband* v. *Epling*, 81 Ill. 172; or upon an event not inevitable: *Tradesman's Bank* v. *Green*, 57 Md. 602; or "when a certain amount is collected:" *Corbett* v. *State*, 24 Ga. 287; or "after arrival and discharge of coal by the brig C.:" *Grant* v. *Wood*, 12 Gray 220; or "payable subject to the policy:" *American Exchange Bank* v. *Blanchard*, 7 Allen 332; or subject to a certain contract; *Cushing* v. *Field*, 70 Me. 50; or "as per agreement:" *Bank of Sherman* v. *Apperson*, 4 Fed. Rep. 25; (*contra*, *Jury* v. *Barker*, El., Bl. & El. 459); or "given as collateral security with an agreement:" *Costello* v. *Crowell*, 127 Mass. 293. In each of these instances the note was held non-negotiable; for the events upon which the maturity of the note depends may never happen.

So an instrument payable in instalments, where no time for the instalments falling due is told, is not a negotiable note: *Moffat* v. *Edwards*, Car. & M. 16. In England a note payable ninety days after sight or when realized, was held not to be a note; as we have seen it has been held otherwise in this country: *Alexander* v. *Thomas*, 16 Q. B. 333.

So a note payable when a certain party arrives at age, is not negotiable; and it makes no difference that he is of age at the time of suit: *Kelley* v. *Hemingway*, 13 Ill. 604; and the same is true if made payable six months after the dissolution of the partnership between A. & B., and the settling of the books: *Sackett* v. *Palmer*, 25 Barb. 179; or when a certain building is completed: *Miller* v. *Excelsior Stone Co.*, 1 Bradw. (Ill.) 273; see *Stevens* v. *Blount*, 7 Mass. 240.)

So a note given with a mortgage payable in a year, or a year and a half from date "or sooner, at the option of the mortgagor, with interest at six per cent. during the term of the mortgage," is not negotiable; for it is not payable at a definite time, or at a time that can be made definite at the election of the holder: *Stults* v. *Silva*, 119 Mass. 137; *Way* v. *Smith*, 111 Id. 523. Likewise of bonds issued by a company containing the clause "The company reserve the right to pay the same at any time by adding to the principal a sum equal to twenty per cent. thereof:" *Chouteau* v. *Allen*, 70 Mo. 339.

So a note payable on the happening of two events, one of which may not happen, is not negotiable: *Massie* v. *Belford*, 68 Ill. 290; and the same is true if a part of it is for a sum certain and a part upon a contingency: *Palmer* v. *Ward*, 6 Gray 340.

The principal case is amply supported by the cases cited in the opinion. In *Smith* v. *Van Blarcum*, cited, it was said: "There is nothing on the face of the note whereby any one can tell, either directly or by reference to any particular event, at what period this paper will become absolutely payable. We cannot

conceive how this can be treated as not payable on a contingency." This is supported by *Woodbury* v. *Roberts*, cited; s. c. 44 Am. Rep. 685. Of a note in another instance it was said: "This divests it of the quality of certainty in the time of payment, which, as we have shown, is one of the essential elements of negotiability. The time of payment may be lessened at the option of the payee, and is therefore uncertain." This note contained a clause allowing the payee to declare the note due at any time he deemed himself insecure; and it was held non-negotiable: *First Nat. Bank* v. *Bynum*, 84 N. C. 24; s. c. 37 Am. Rep. 604. See *Morgan* v. *Edwards*, 53 Wis. 599; s. c. 40 Am. Rep 781; *Mahoney* v. *Fitzpatrick*, 133 Mass. 151; 43 Am. Rep. 502; *Miller* v. *Poage*, 56 Ia. 96; s. c. 41 Am. Rep. 82.

W. W. THORNTON.

Supreme Court of Iowa.

VIMONT *v.* CHICAGO AND N. W. RAILWAY CO.

A cause of action for a tort is assignable so as to vest in the assignee a right of action in his own name.

J., who was injured by the negligence of defendant railroad company, assigned his claim for damages to V., who executed the following agreement: "In consideration of the assignment to me by C. O. Johnson of his claim for damages against the Chicago & Northwestern Railway Company, resulting to him by reason of an injury received by him on or about the thirty-first day of August 1881, on said railway, I hereby agree to dispose of the entire amount realized on said claim as follows: For my own compensation in and about the prosecution of said claim, and for the use of any advances of money I may make I am to retain thereof the sum of fifty dollars; I am also to retain all sums of money that I may advance in the prosecution of said claim; next, I agree to pay out of the proceeds of said recovery the reasonable fee of the attorneys and agents employed to prosecute said claim on such fee therefor as may be agreed upon, if any agreement for a specific amount shall be agreed upon, and the balance of said recovery I agree to pay to the said C. O. Johnson." *Held*, that the cause of action was assignable; that the assignment and agreement did not constitute barratry, champerty, or maintenance; and that V. was entitled to maintain an action for damages against the railway company in his own name.

In such an action, even if it should appear that the assignment was colorable and fraudulent, the assignor need not be made a party to the action.

Where an assignment of a cause of action is legal and valid, the fact that it was made for the express purpose of depriving defendant of the right to remove the case to a federal court on the ground of citizenship, will not invalidate it or entitle defendant to such removal.

APPEAL from Polk Circuit Court.

The plaintiff, as assignee of one Johnson, brought this action to recover damages for a tort committed by the defendant. The latter moved the court to require Johnson to be made a party to the action. This motion was overruled, and the defendant appeals. The latter